

Applicants: Zhao, et al.
Serial No.: 10/589,938
Filing Date: June 29, 2007
Page 6 of 12

REMARKS

In the office action, claims 1-24 have been objected to and rejected under §§112, 101, 102 and 103. In response, Applicants submit the herein amendments to the claims and remarks.

Claims 3, 10 and 22-24: have been cancelled. Claims 1, 2, 4-9, 11-18, and 21 have been amended, and new claims 25-27 have been added. Consequently, claims 1, 2, 4-9, 11-21 and 25-27 are pending examination.

Support for Claim Amendments

Claim 1 has been amended to recite the limitation that the protein and the fiber have been isolated from their source. Support for this amendment can be found throughout the specification. For example, on page 6, lines 21-30 and in the examples isolated protein and fiber are utilized.

Claim Objections

In the office action, claims 3-11 have been objected to. According to the Examiner, claims 3-11 should read “A batter composition...” In response, Applicants have amended the claims as the Examiner’s suggests.

Rejections under §112

Claims 2-4, 6-15, 18 and 22-24 have been rejected under 35 U.S.C. §112, second paragraph as allegedly being indefinite. In particular, the Examiner asserts that the parentheses in claims 3, 6, and 11 are improper because it is unclear whether the limitation in parenthesis is a required or optional limitation.

In response, Applicants have deleted the text in parenthesis from claims 3, 6 and 11.

Applicants: Zhao, et al.
Serial No.: 10/589,938
Filing Date: June 29, 2007
Page 7 of 12

Claim 3 has also been rejected under §112, second paragraph for reciting “which when used....” According to the Examiner, it is unclear what method steps are actually being performed and what limitations are actually required. In response, Applicants have deleted claim 3.

Claim 10 has been rejected for lacking clarity. According to the Examiner, a limitation appears to be missing from the claim. In particular, the Examiner is unclear as to what component of the composition is present in less than 85 wt%. The Examiner also assumes that the word “of” is missing between “weight” and “digestible.” In response, Applicants have cancelled claim 10.

Claims 2-4, 6-9, 14, 15, 18 and 24 have been rejected for reciting an element of the claim, and then a preferred and/or optional element. According to the Examiner, it is unclear what limitations are required. In claims 11-13, the phrases “such as” and “optionally” allegedly render the claims unclear. In response, Applicants have amended claims 2-4, 6-9, 14, 15, 18 and 24 to remove the “unclear” language.

The Examiner noted that Claim 14 appears to be missing a number before the first wt% recited in the claim. The Examiner assumes “1” was intended to appear before wt%. In response, claim 14 was amended to recite “1 wt%” as assumed by the Examiner.

Claims 22-24 have been rejected for reciting a use of a dietary fiber and/or insoluble protein, but not reciting any steps. According to the Examiner, this renders the claims indefinite. In addition, the Examiner asserts that the recitation of “in particular a dairy or vegetable protein” is unclear. In response, Applicants have cancelled claim 22-24 and added new method claims 25-27.

Accordingly, in light of the above, Applicants respectfully request the §112 rejections be reconsidered and withdrawn.

Rejections under §101

Claims 22-24 have been rejected under §101 because they claim a use without any steps involved in the process. In response, claims 22-24 have been cancelled.

Rejections under §102

Claims 1, 3, 5, 7-11 and 15-22 have been rejected under §102(b) as being anticipated by Zhang (WO 01/08513). According to the Examiner, Zhang teaches dipping food in a pre-mix solution (which the Examiner characterizes as a batter composition) where the pre-mix solution comprises starches, proteins, gums, emulsifiers and/or salts. The Examiner also contends that Zhang teach at least one insoluble vegetable protein or insoluble dietary fiber in its solution.

According to the Examiner, Zhang also teach:

- the composition provides a crispy texture after microwaving and/or oven baking;
- the composition comprises a dietary fiber such as guar or xanthan gum;
- the combined amount of fibers and insoluble proteins is at least 1 wt% based on total dry weight;
- the composition comprises starches and gums which are considered thickeners, as well as salt; and
- the coated food product is frozen and can be fish, poultry, seafood, vegetable, etc.

Applicants: Zhao, et al.
Serial No.: 10/589,938
Filing Date: June 29, 2007
Page 9 of 12

We note that Zhang does not teach a batter composition comprising BOTH fiber and protein. An important feature of the present (which is clearly stated in the amended claims) is that BOTH fiber and protein are present in the batter composition. See amended claim 1 and Example 2 of the application.

Therefore, Applicants respectfully submit that Zhang et al. do not anticipate the claimed invention. Reconsideration and withdrawal of the §102 rejection based on Zhang et al. is respectfully requested.

Claim 2 has been rejected under §102(b) as being anticipated by Landon (Australian Patent Application No. 54821/90). According to the Examiner, Landon teaches a batter composition comprising an insoluble dairy protein such as casein.

Claim 2, as amended, requires BOTH an insoluble dairy protein and insoluble fiber protein. Landon does not teach such a batter composition. Therefore, Applicants respectfully submit that Landon does not anticipate the claimed invention. Reconsideration and withdrawal of the §102 rejection based on Landon is respectfully requested.

Claims 1, 3, 4, 7, 11-13 and 15-23 have been rejected under §102(b) as being anticipated by Bengtsson et al. (U.S. Patent No. 4,272,553). According to the Examiner, Bengtsson teaches a batter composition comprising at least one of insoluble vegetable protein and insoluble dietary fiber because Bengtsson teaches a coating comprising potato fiber (the application states “potato granules”). The Examiner goes on to assert that Bengtsson teach that the composition provides a crispy texture after microwaving or oven baking.

Amended claim 1 requires that the fiber component and the protein component are isolated from their native source (e.g. vegetable).

One reason for doing so is to have control over the amounts of each component used. Bengtsson basically uses potato granules (i.e. dehydrated mashed potato product) in their coating – no isolating of fiber and/or protein content. Therefore, Bengtsson's coating contains whatever amounts of protein and fiber exist in an unmodified potato. This is quite distinct from the claimed invention.

Therefore, Applicants respectfully submit that Bengtsson does not anticipate the claimed invention. Reconsideration and withdrawal of the §102 rejection based on Bengtsson is respectfully requested.

Rejections under §103

Claims 6 and 24 have been rejected under §103(a) as being unpatentable over (i) Zhang, (ii) Bengtsson, (iii) Zhang in view of McCue (Prepared Foods, 1996), and (iv) Zhang in view of Bengsston.

The Examiner asserts that because Zhang and Bengtsson allegedly teach the claimed insoluble protein, the solubility of such a protein and/or dietary fiber in water at pH of 7 and temperature of 20°C would be expected to be 10 wt % or less, based on the total weight of the solution and that the protein will react or co-act in the same manner as claimed by Applicant. The Examiner notes that a component (e.g. protein and/or insoluble fiber) and its properties are inseparable.

The Examiner recognizes that Zhang does not specifically teach insoluble dietary fibers from tubers, roots or potatoes. According to the Examiner, McCue teaches that protein can be found in a variety of foods, including potatoes, and teaches that potato proteins are insoluble. Therefore, the Examiner asserts that it would have been obvious to use potato protein in the batter composition of Zhang.

Applicants: Zhao, et al.
Serial No.: 10/589,938
Filing Date: June 29, 2007
Page 11 of 12

Finally, as per the Examiner, Zhang does not specifically teach insoluble dietary fibers from tubers, roots or potatoes. The Examiner relies on the disclosure of Bengtsson to make up this deficit. The Examiner asserts that Bengtsson teach a coating composition comprising potato fiber. Therefore, the Examiner contends that it would have been obvious to use a potato fiber in the batter composition of Zhang based in the disclosure of Bengtsson.

As discussed above, the amended claims require BOTH a fiber component and a protein component, and that the fiber and protein component are isolated from their native source (e.g. vegetable.

In order to establish a *prima facie* obviousness rejection under §103, one of the criteria to be met is that upon combining the cited documents, all of the claim limitations are met.

Applicants have explained the importance of the claimed batter composition having BOTH a fiber component and a protein component, and that the fiber and protein component are isolated from their native source (e.g. vegetable).

Upon combining the disclosures of Zhang et al. and/or Bengtsson, all of the claim limitations are not disclosed or suggested. Therefore, the claims cannot be found to be obvious in view of (i) Zhang, (ii) Bengtsson, (iii) Zhang in view of McCue (Prepared Foods, 1996), or (iv) Zhang in view of Bengsston.

Therefore, Applicants respectfully request reconsideration and withdrawal of the §103 rejections based on (i) Zhang, (ii) Bengtsson, (iii) Zhang in view of McCue (Prepared Foods, 1996), and (iv) Zhang in view of Bengsston.

Applicants: Zhao, et al.
Serial No.: 10/589,938
Filing Date: June 29, 2007
Page 12 of 12

It is now believed that the application is in condition for allowance. If the Examiner believes that any remaining issues can be resolved via telephone, she is invited to contact the undersigned at her earliest convenience.

Respectfully submitted,

HOFFMANN & BARON, LLP
6900 Jericho Turnpike
Syosset, New York 11791
(516) 822-3550
LTE/aca

/lauren t emr/

Lauren T. Emr
Registration No.: 46,139
Attorney for Applicants